

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF COTTAGE GROVE

In the Matter of the Conditional Use
Permit of Alvin Martin and A & F Auto
Parts and Recycling

**FINDINGS OF FACT,
CONCLUSIONS,
RECOMMENDATION AND
MEMORANDUM**

This matter came on for hearing on Friday, December 18, 2000 at the Cottage Grove City Hall in Cottage Grove, Minnesota. The hearing continued on March 16, 2001, when it concluded. The record closed on April 30, 2001, upon receipt of final exhibits from the City.

James M. Strommen, Esq., of the firm of Kennedy & Graven, 470 Pillsbury Center, Minneapolis, Minnesota 55402 appeared on behalf of the City of Cottage Grove.

Daniel N. Rosen, Esq., of the firm of Rosen & Rosen, 150 South Fifth Street, Suite 3250, Minneapolis, Minnesota 55402 appeared on behalf of Alvin Martin and A & F Auto Parts and Recycling for the March 16, 2001 hearing. Mr. Martin and A & F appeared without legal representation at the December 18, 2000 hearing.

NOTICE

This Report is a recommendation to the City of Cottage Grove. The City Council may adopt, reject, or modify the Findings of Fact, Conclusions, and Recommendation. However, the City Council may not make its final decision in this matter until this report has been available to the parties for at least ten (10) working days, and any party adversely affected by it has been offered the opportunity to file exceptions and present argument to the City Council. Parties should contact the City Clerk, City of Cottage Grove, Cottage Grove City Hall, 7516 80th Street, Cottage Grove, Minnesota 55016 to obtain information on how to file objections or present argument to the City Council.

STATEMENT OF ISSUE

Should the City take disciplinary action against the conditional use permit?

Subissues are:

- (1) Whether the permittee is in violation of the terms of the permit?
- (2) What was the area comprising permittee's non-conforming use automotive reduction/wrecking yard – junkyard operation at the time the City originally zoned the property residential?

Based upon all the files and exhibits in the record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. City is a municipality and a political subdivision of the State of Minnesota, located in Washington County. The City is statutory and governed by a Mayor and City Council.

2. Permittee A & F Auto Parts is a Minnesota corporation in the business of operating an automotive reduction/wrecking yard including junked vehicles ("Business"), at 10876 Ideal Avenue South in the City. This property consists of seven and one half (7.5) acres and is identified or legally described in several exhibits entered into the record ("Property"). (Exhs. 1,3,36,67; Transcript December 18, 2000 pp. 6 1. 17; 19 1. 7 ("12-18-2000 Tr. ")). Alvin Martin owns and operates the Business and also resides on the Property. (12-18-2000 Tr. P. 5). The Business has operated on portions of the Property at least since the 1950s. (City stipulation).

3. By ordinance passed on July 27, 1959, the Township of Cottage Grove established a zoning code and classified the area containing the Property as Residential-Agricultural, establishing the Business on the Property as a non-conforming use. (Exh. 2). The code required all junkyards to be contained "within a continuous solid fence.., as to screen completely the operation of the junkyard" and prohibited any junkyard from continuing as a non-conforming use for more than one year after the passage of the ordinance, unless the required screening was maintained. (Id.).

4. By ordinance passed March 1, 1963, the Township re-zoned the area containing the Property as R-3 (Low Density Residential). Auto wrecking yards and junkyards were only allowed in Industrial Districts and continued as non-conforming uses in R-3 Districts, provided, however, that non-conforming uses could be enlarged by special use permit on such terms and conditions as established by the Town Board. (Exh. 3, Sect. II. C. 1; III. C. 2.; III. D. 11.).

5. The area of the Property on which the Business was operated at the time of the 1959 and 1963 ordinance changes establishing the Business as a non-conforming use was a total of one(1)acre. This was identified by an aerial photograph and sketches submitted by Martin and the Permittee predecessor as a fenced area within the Property. (Exhs. 4, 6, 14).

6. In 1964 and again in 1979 the Township and City denied and then approved expansions of the non-conforming use of the Property through special or conditional use permits establishing terms and conditions on which the Business could expand. (Exhs. 15, 16, 17, 23, 28).

7. Throughout the history of Martin's operation of the Business on the Property leading up to the 1995 CUP at issue, the City observed numerous violations of the permits and provided notice to Martin of the violations. (Exhs. 6,19,20,25).

8. As a result of repeated violations and complaints, the City considered revocation of the 1979 CUP or amendments thereto for the purpose of obtaining CUP compliance from the Business. (Exhs. 32,33). Following review of and hearings on the Business and compliance with the 1979 CUP, the City adopted a resolution amending the 1979 CUP by Resolution 95-79 ("1995 CUP"). (Exhs. 35,36, 37). The 1995 CUP currently governs Martin's use of the Property for the Business, the Property legally described as:

Part of the Southeast Quarter (SE 1/4) of Section Twenty-Nine (29), Township Twenty-Seven (27) North, Range Twenty-One (21) West, beginning at a point on the east line of Section Twenty-Nine (29), 744.2 feet north of the southeast corner of Section Twenty-Nine (29); thence west 1316 feet to the west line of the Southeast Quarter (SE1/4) of the Southeast Quarter (SE1/4) of Section Twenty-Nine (29); thence South 247.6 feet; thence east 1316 feet; thence North 248.07 feet to the point of beginning; excluding therefrom the east 33 feet of said tract for public right-of-way, Cottage Grove, Washington County, Minnesota.

Commonly described as A & F Auto, 10876 Ideal Avenue South, Cottage Grove, Washington County, Minnesota. (Exh. 36).

9. Since granting the 1995 CUP the City has identified numerous CUP violations and repeatedly informed Martin in writing of the specific violations. (Exhs. 38, 40,42,44,45,47,50,51,52,53,54,55,56).

10. Martin has been further informed by the Minnesota Pollution Control Agency ("MPCA") by letter dated August 24, 1999, that the MPCA and Washington County have identified violations on the Property of hazardous waste storage requirements under state law. (Exh. 47). These conditions have not been abated. (Exh. 68A,C-K, 69, 3-16-2001 Tr.)

11. The violations to the 1995 CUP, including violations of MPCA regulations regarding tire storage and hazardous waste storage and removal (Exhs. 47,5 7), are set forth in exhibits, including, the December 13, 2000 memorandum by John Burbank of the City (Exh. 68A), photographs (Exhs. 68C-K,69, 73A-F, 74A-C), the testimony of Mr. Burbank on December 18, 2000 and again on March 16, 2001 (Tr.) and by the testimony of Mr. Martin on December 18, 2000 (Tr. P.191. 7) and March 16,2001 (Tr. Pp.9-15,49).

12. The evidence of ongoing, substantial and current 1995 CUP violations, as of March16, 2001, is either stipulated to by Martin or credible and un rebutted.

13. Martin has done little to correct the violations, as of March 16, 2001 hearing, and has apparent physical difficulty in carrying out the required remediation of the Property to bring it in compliance with the 1995 CUP.

14. The City's most recent inspection of the Property was March 16, 2001 and carried out by Burbank. At that time, the violations one through six described in the

December 13, 2000 memo existed, and by stipulation of the parties, items seven, eight and nine in the December 13, 2000 memo and the electrical wiring violation in item five of the memo have been dropped by the City. (3-16-2001 Tr. pp.16-26). The current proven and stipulated violations are:

a. Ongoing and current parking of vehicles and equipment outside of the approved fenced storage area on the Property in violation of 1995 CUP conditions 2, 3 and 5 and incorporated provisions 6 and 11 of the 1979 CUP. (Exhs. 28, 36, 37, 68A, C-K, 69, Burbank and Martin Testimony).

b. Failure to provide and maintain twenty-foot wide and multiple fire vehicle access aisles within the storage area in violation of 1995 CUP condition 11. (Exhs. 36, 37, 66, 68A, C-K, 69, Burbank and Martin testimony).

c. Ongoing and current storage of parts, materials, wood pallets, fire wood, equipment and machinery stored outside of screened area in violation of City Code provisions incorporated into the 1995 CUP, Title 11 chapter 2, Section 9 (f) (4) and chapter 6, Section 2. (Exhs. 36, 37, 68A, C-K, 69, Burbank and Martin Testimony, Exh. 79, Title 11 ch. 6, City Code)).

d. Improper storage or disposal of motor fluids, freon gas, and batteries in violation of condition 12 of the 1995 CUP and of Title 11, chapter 2, Section 9 (f) (4) of the City Code incorporated into the 1995 CUP. (Exhs. 36, 37, 49, 57, 68A, C-K, 69, 73, 74, Burbank and Martin Testimony).

e. Improper storage of gaseous tanks in violation of the Uniform Fire Code and Title 11, chapter 2, Section 9 (f) (4) of the City Code incorporated into the 1995 CUP. (Exhs. 36, 37, 68A and B, Burbank and Martin Testimony, Exh. 77, Article 74, Sections 7401.5.1, 7401.6.1, 7401.6.3, 7401.6.4, 7401.8.3, 7401.8.6, 7401.14, 7402.1.2 and 7403.1.7 1997 Uniform Fire Code, adopted by reference in City code Section 9-6-1, see Exhs. 68E-2, 68G-3-G-8).

f. Improper storage of tires on the Property creating a health and safety hazard, and storage of more than 500 tires without a County permit in violation of Title 11, chapter 2, Section 9 (f) (4) of the City Code incorporated into the 1995 CUP. (Exhs. 36, 37, 49, 57, 68A and B, 73, 74, Burbank and Martin Testimony).

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The City Council has jurisdiction over this subject matter of this proceeding. The City is acting in its quasi-judicial capacity in determining whether a CUP has been violated. *Honn v. City of Coon Rapids*, 313 N W2d 409, 417 (Minn. 1981).

2. Proper notice of the hearing was timely given, and all relevant substantive and procedural requirements of law and the City's Code have been fulfilled and, therefore, the matter is properly before the Administrative Law Judge pursuant to Minn. Stat. § 14.55 and the resolution of the Cottage Grove City Council on October 4, 2000 (Exhibit 60).

3. City code Title 11, Section 2-9G provides that "A violation of any condition set forth in a conditional use permit shall be a violation of this Title and shall constitute grounds for revocation of the conditional use permit by the City Council."

4. Substantial evidence exists in the record that Permittee A & F Auto Parts has materially and repeatedly violated multiple conditions of the 1995 CUP, affecting or potentially affecting the health, safety and welfare of residents in the City.

5. A nonconforming use is established if a permitted use of property becomes a prohibited use because of a city zoning change. *See, Oswalt v. County of Ramsey, 371 N W 2d 241 (Minn. Ct. App. 1985)*. City ordinance may prohibit expansion of or improvement to the nonconforming use, unless such expansion or improvement is done with the approval of the city in the permit process. *Id At 246*. The right to and scope of a non-conforming use is fixed at the time of the zoning change. *Id*

6. The total acreage on which Alvin Martin and A & F Auto Parts have a nonconforming use on the Property is the one (1) acre fenced in area depicted in the aerial photograph taken on April 24, 1962. (Exh. 4). The balance of the Property used for the Business is allowed pursuant to City CUP approval and Permittee's compliance with the terms of the CUP. Permittee has violated the terms of the 1995 CUP.

Based upon all the files and proceedings herein, the Administrative Law Judge makes the following:

RECOMMENDATIONS

1. That the City take disciplinary action against the licensee, up to and including the revocation of the 1995 CUP.

2. That the City Council consider, upon revocation of the CUP, that the automotive wrecking/reduction junkyard business on the property be limited to the one (1) acre depicted in the aerial photograph taken on April 24, 1962 (Exhibit 4).

Dated this 9th day of May, 2001.

ALLAN W. KLEIN

Administrative Law Judge

Reported: Court Reported, Tracy Jo Wold, RPR, Diane M. Wright & Associates.